

A fairer go for all

Frank Brennan

MORE than 40,000 people participated in the National Human Rights Consultation. Despite the burdens of the global financial crisis and the complexities of an emissions trading scheme, Australians are able to walk and chew gum at the same time. They are very interested in discussing the protection of human rights, even in times of economic uncertainty. The four-member consultation committee has now reported to government, making 31 recommendations.

We spent four months traversing the country and attended 66 community round tables in 52 locations, from Christmas Island to Palm Island and from Thursday Island to Hobart.

During the consultation, much of the media attention focused on the debate about the utility and desirability of a federal human rights act.

Half our recommendations have nothing to do with such an act and could be implemented regardless of whether parliament was minded to pass a human rights act if and when the Rudd government decides to propose one.

Mary Kostakidis, Tammy Williams, Mick Palmer and I were obviously chosen as persons with very different backgrounds and perspectives. We started with our differences, and we still have some. The government entrusted us to feed back what we heard from the Australian community. We came to the task confident that Australia was a nation that prided itself on the fair go, but knowing that much could be done to improve human rights, especially the human rights of people who fell between the cracks in our egalitarian society.

The focus groups and the opinion survey conducted as part of our inquiry confirmed the concern expressed by many round-table participants that they were worried for the dignity of their fellow Australians, especially people with mental illness, the elderly, people with disabilities, people living in rural and remote areas (particularly in remote indigenous communities), and children in need. For example, 75 per cent of those surveyed thought that the human rights of people with a mental illness needed to be better protected, and 72 per cent thought the same in connection with the elderly.

We found Australians were keen to be educated about human rights. They want school curriculums and public service training sessions to instil a deeper appreciation of rights and responsibilities. Not just new Australians need access to a document listing in plain language the rights and responsibilities of those who live here, regardless of their culture or background.

Many participants in the consultation endorsed calls by the federal opposition for an audit of all existing commonwealth laws for human rights compliance and for better parliamentary scrutiny of future laws. Once the Attorney-General's Department concludes such an audit, parliament will be able to respond to the shortfalls. Rushed laws passed with inadequate consideration for human rights (such as this year's NSW law on bikies) should be beyond the pale in Canberra.

We knew our task was politically charged because many citizens wanted to focus on the question of whether we should have a federal human rights act. The Coalition parties were opposed. The Labor Party was divided. Most of those attending community round tables favoured a human rights act and 87.4 per cent of those who presented submissions to the committee and expressed a view on the question supported such an act: 29,153 out of 33,356. In a national telephone survey of 1200 people, 57 per cent expressed support for a human rights act, 30 per cent were neutral and only 14 per cent were opposed.

There was disagreement, too, among members of the committee about the need for and usefulness and desirability of a human rights act.

However, on the weight of all the views expressed, the committee, persuaded of the need for such an act, has recommended one that applies only to the commonwealth and not to the states and territories.

Victoria and the ACT already have such measures in place.

Whatever decision government makes about introducing into parliament a bill for such an act, it is essential that government take account of the other primary options raised in our report, especially in relation to the Australian Human Rights Commission's mandate for protecting economic and social rights.

A human rights act will be no substitute for more resources, and more effective distribution of those resources, to secure the basic economic and social rights of those whose dignity is most at risk in contemporary Australia.

Consultation participants focused particularly on the rights to health, housing and education. The Solicitor-General has advised that "an examination of the content of those rights as set out in the (International Covenant on Economic, Social and Cultural Rights) demonstrates a general absence of what would traditionally be regarded as judicially manageable standards". The committee was not convinced that courts were well equipped to contribute to better scrutiny and protection of economic and social rights. The states and territories remain the main providers of services that guarantee protection of the principal economic and social rights. The commonwealth can do little but put its own house in order and lead by example.

Our elected leaders could adopt many of the recommendations in our report without deciding to grant judges any additional power to scrutinise the actions of commonwealth public servants or to interpret commonwealth laws in a manner consistent with civil and political rights. Alternatively, they could decide to take the extra step, engaging the courts as a guarantee that our federal politicians and the federal public service will be kept accountable in respecting, protecting and promoting the human rights of all Australians.

Even in the absence of a human rights act, the modest steps for education, auditing, scrutiny and compliance should still be taken. Each is a small step on the path to dignity and a fair go for all. Australia has always been on this path.

At times in the past our leaders - such as H.V.Evatt and Jessie Street - have taken great strides on the path, showing the world a way forward. It is time for our elected leaders to decide which new steps to take on the path to protecting and promoting human rights.

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